

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRIAN LEE HUNT,

Petitioner,

-v-

9:22-CV-171

STEWART ECKERT,
Superintendent of Wende
Correctional Facility,

Respondent.

APPEARANCES:

OF COUNSEL:

BRIAN LEE HUNT
Petitioner, Pro Se
96-B-0328
Wende Correctional Facility
P.O. Box 1187
Alden, NY 14004

HON. LETITIA JAMES
New York State Attorney General
Attorneys for Respondent
28 Liberty Street
New York, NY 10005

HANNAH S. LONG, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On February 16, 2022, *pro se* petitioner Brian Lee Hunt (“petitioner”) filed this petition in the U.S. District Court for the Western District of New York seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. Dkt. No. 1. Along with his petition, petitioner moved for leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 2.

Thereafter, the petition was transferred to this judicial district, Dkt. Nos. 3, 4, where U.S. Magistrate Judge Daniel J. Stewart granted petitioner’s IFP Application and directed the respondent to file an answer, Dkt. Nos. 5, 9.

Respondent opposed the petition and, with the Court’s permission, filed a limited answer addressing only the issue of timeliness. Dkt. No. 18. In his reply, petitioner raised an “actual innocence” claim. Dkt. Nos. 20, 21, 34.

Respondent then sought, Dkt. No. 22, and received, Dkt. No. 23, leave to respond to petitioner’s new claim of innocence. Dkt. Nos. 39, 40. Petitioner filed a sur-reply. Dkt. No. 41.

On August 20, 2024, Judge Stewart advised by Report & Recommendation (“R&R”) that the petition be denied and dismissed. Dkt. No. 43. As Judge Stewart explained, petitioner’s claims were time-barred, not entitled to the benefit of any tolling doctrine, and were meritless in any event.

Neither party has lodged objections, and the time period in which to do so has expired. *See* Dkt. No. 43. Thus, upon review for clear error, the R&R is accepted and will be adopted. *See* FED R. CIV. P. 72(b).

Therefore, it is

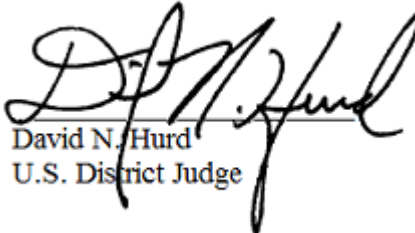
ORDERED that

1. The Report & Recommendation (Dkt. No. 43) is ACCEPTED; and
2. The petition is DENIED and DISMISSED;
3. No Certificate of Appealability shall issue because petitioner has failed to make a “substantial showing of the denial of a constitutional right” as 28 U.S.C. § 2253(c)(2) requires; and
4. Any further request for a Certificate of Appealability must be addressed to the Court of Appeals in accordance with Rule 22(b) of the Federal Rules of Appellate Procedure.

The Clerk of the Court is directed to terminate the pending motion, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.

Dated: September 10, 2024
Utica, New York.



David N. Hurd
U.S. District Judge